[Continued from first page.]

ing out the true theory of the Federal Constitution, at its formation, that the whole sovereign people of the thirteen states, in legal contemplation, were present, acting in one vast assemblage or body, where every thing was understood and discussed, bearing on the great subject under consideration.

In theory, there was one vast assembly of the American people in the Convention, constituting the primary elements of society, in its original sovereignty, agreeing upon the principles of the Federal Government and Union; and it would require no great stretch of the imagination, to suppose that after providing for the general powers of government, in peace and war, in relation to foreign nations, the states, and Indian tribes, that they should have been particularly anxious to erect a strong citadel for the protection of man, as man, from the tyranny of his fellow beings.

We may suppose that from one part of the Union, a speaker should rise and say, that in the section of country from which he came, owing to the late troublous times of the revolutionary war, in which committees of safety had from necessity assumed supreme power over individuals, that even the same practice was continued, without any of the legal forms known and observed by the common law, for the protection of life or the conviction of the guilty; and that men had been deprived of life by *lynch-law*, "*without due process of law*;" and he therefore claimed that no man, henceforth, should be deprived of life, except by due process of law;—while another arises from the North, and states, that slavery will never be assumed as a part of the burden and crime of the North, unless it is identified by great constitutional *ear-marks*, by infallible tests, so that the fugitive may be known, and all who are claimed as such, may be distinguished as those who have been deprived of liberty. What I mean, says the speaker, is, that every man, woman and child, claimed as slaves, before they shall be deprived of liberty, shall always have an opportunity, as ample as the benignity of the common law, to vindicate their freedom, so far as the forms of a trial are concerned; and they shall not be deprived of their liberty and become slaves, except by the indictment of a grand jury, and trial by a petit jury, and the judgment of a court thereon, that the person is a slave, and the property of A. And on this trial, let the person claimed to be a slave, have the benefit of counsel, appointed by the court, if he is unable to employ one;—let him plead he is not a slave, and let the burden of proof lie upon him who claims to be proprietor of the supposed slave. Let the person claimed as a slave have the benefit of compulsory process, to compel the attendance of those by whom his freedom may be maintained.

But if the petit jury agree on oath, unanimously that he is a slave, let the judgment of the court be pronounced, that he is deprived of his liberty, "by *due process of law*," and let there be a record made up, stating these facts as an enduring memorial, and filed with the clerk of the court, as a perpetual testimonial that this *person* has been *deprived* of his liberty according to the Constitution. The man of the South rises in Convention, and says, that many persons are claimed as slaves who are not, and others who are, who think they are not. This mode of trial will settle the question, so that it may not be a matter of unending dispute, and we of the South are willing to enter the confederacy on these terms, that "*no person shall be deprived of life, liberty, or property, without due process of law*."

Thus the great and difficult question was arranged, in the formation of the Constitution. Let it not be said that the master had, antecedent to the Constitution, *vested rights* of property in the slave;—for, granting that proposition, still the master, for the *greater* security from his slaves' insurrections and flights, agreed upon a *new criterion*, upon a new definition of slavery, and upon a *slavery* which was first *proven* by the course of a legal trial, of the most important character.

Another important question arises, which is, if the Constitution established the terms on which slavery might exist; and if those terms have not been complied with, is it not proof positive, at least a constitutional presumption, that there are no persons in this land, who could legally be proved to be slaves, provided the great constitutional *formula* is complied with, as this was the only evidence of slavery recognized by the Constitution, and *even that* has not been complied with in a single case in 48 years. The indictment, trial, and judgment against a person as a slave, is the commission by which the master was authorized to exercise those powers over the slave, supposed to belong to him as master. Without this commission, this constitutional authority, growing out of an indictment, trial, and judgment against the slave, the act of the master, in exercising dominion over the slave, is as unconstitutional as for a man, without commission, election, or appointment, to assume the duties of sheriff, and hang a man, untried, but suspected of murder. It would be murder in the assumed sheriff, because he had no commission, no matter how guilty the individual who was executed. The inquiry is, had the sheriff a commission—had he authority to hang?

The only difference between a freeman and a slave, under the Constitution, was that the freeman was deprived of his liberty by due process of law, for crime, and the slave was deprived of his liberty by due process of law, simply because he was a slave; and the Constitution gave him an opportunity, once in his life, to vindicate his freedom. Indictment, trial, and judgment, are the modes by which, under the Constitution, the white man and black man both lose their liberty, and by no other process can they constitutionally be deprived of it—one for *crime*, the other from *misfortune*.

Again, in the 3d clause in the 2d section of the 4th Article of the Constitution, which relates in part to fugitive slaves, the people have in their sovereign capacity, legislated on this subject, saying that "no person held to service or labor, in one state under the laws thereof, escaping into another, shall in consequence of any laws or regulations therein, be discharged from such service, or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

When the man of South Carolina, pursuing his fugitive slave to New-Hampshire, comes and demands his slave to be delivered up; what will the magistrate of the granite state say to the slaveholder of the Palmetto? I acknowledge I am bound to make out an order and deliver up this fugive to you, as a part of the grand compact of the Constitution, provided this fugitive has been deprived of his "liberty by due process of law." For that is the grand principle on which the men of the free states consented that slavery might exist, and only in those cases, where the person was deprived of his liberty, by due process of law, by indictment, trial, and judgment against him. Now, says the magistrate, I know slavery, in no form or shape under the Constitution, except where the slave has lost his liberty, by due process of law, and that was the tenure by which slaves were to be holden in the United States of America, and by no other, and so the North and the South, East and West have agreed in the Constitution, and if you can produce me a record, or the exemplification of a record, showing to me, that a court of competent jurisdiction, proceeding upon the principles of the common law, by the indictment or presentment of a grand jury of not less than 12 or more than 23 men who have found that indictment, or made that presentment on oath, and that 12 men on their oath as a jury have said on the trial of the fugitive, that he was a slave, and a court has pronounced judgment thereon, then I will make an order for you to take the person as your fugitive slave—otherwise, not. No matter what evidence you produce to show that you own the slave, if your title be unbroken through five generations of men, and if you have a bill of sale from him who claimed the fugitive's mother and grandmother, that will not answer. The word "person" is used for the fugitive slave, in the 3d clause of the 2d section of the 4th article—"No person held to service," &c.—The word *person* here means *slave*, and in other parts of the Constitution the word "persons" is used for slaves, as in the 3d clause of the 2d section of the 1st article, speaking of those who shall constitute the basis of representation in Congress, after including the whole number of free persons and those bound to labor, excluding Indians not taxed, and "three fifths of all *other persons*,"—by which slaves are intended, in the last part of the sentence. The slave is designated under the appellation of "*persons*" in fixing the basis of representation—also the word "*person*" is employed to denote the fugitive slave in the 2d section of the 4th article, and the words in the 5th article of amendments of the Constitution, "nor shall any person be deprived of life, liberty, or property, without due process of law," must necessarily include slaves. For if it did not, after having previously twice used the word "person" where it meant slaves, if it did not intend to embrace the slave, there would have been an exception in relation to the slave. The words of the Constitution have no exception like the following: "Nor shall any person (except slaves) be deprived of their life, liberty, and property, without due process of law." "Any person," is equivalent to every body.

The word "person" when used under the terms "three-fifths of all other persons," is used to designate slaves exclusively, in the sense it is there used, in the 1st article.

"No person held to service or labor in one state, under the laws thereof, escaping," &c., 2d section 4th article.

In this article of the Constitution, the words "No person" means, not only slaves, but white apprentices bound to serve their masters for a limited time, and the sons or daughters of a parent, being minors, and a man's wife, escaping from the person to whom their service is due, to another state, may be delivered up as well as the slave, &c. That the words "no person" here, may mean the fugitive slave, the bound free apprentice, the wife, the son or daughter, it is believed none will dispute.

"Every person," in the 5th article of the amendment of the Constitution, covers the whole ground of our humanity, and means every body, without exception, or in other words, it is as plain as though it had said "no human being now living in the United States, or who may hereafter live in said states, shall be deprived of his life, liberty, or property, without an indictment by a grand jury, a trial by a petit jury, and the judgment of a court thereon."

Before advancing to the other branch of of this argument, we may be permitted to assume, at this stage of our reasoning, that there is not a slave at this moment in the United States, upon the terms mutually agreed upon, by the people of this country, at the formation of the Constitution. If this be true, any judge in the United States, who is clothed with sufficient authority to grant a writ of *habeas corpus*, and decide on a return made to such a writ;—on the master and slave being brought before said judge, to inquire by what authority he, the master, held the slave, if the master could not produce a record of conviction, by which the particular slave had been deprived of his liberty, by indictment, trial, and judgment at a court, the judge would be obliged, under the oath which he must have taken, to obey the Constitution of his country' to discharge the slave and give him his full liberty.

2 Upon the same principle, no judge, magistrate, or court in the free or slave states, is authorized to make an order to deliver up a fugitive slave, unless the master produces a record of the conviction of the slave, showing that he has been deprived of his liberty by an indictment, trial, and judgment of a court, or by "due process of law." Let it always be borne in mind that the Constitution, being a supreme act of the sovereign people, acting with the oneness of a consolidated empire, and not as distinct sovereignties, in its formation, that it becomes paramount to the constitution, laws or usages of any single state, whenever or whatever they conflict. So fully sensible that the Constitution of the United States would be but a rope of sand, unless the same, and the laws made in pursuance of it, by the Congress, were paramount to all state constitutions and legislation, that the American people did not choose to leave it as a matter of inference, but incorporated the same into the Constitution of the United States.

"Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof," 18th clause of the 8th section of the 1st article.

But more particularly the 2d section of the 6th article of the Constitution of the United States establishes the proposition, which is, "this Constitution and the Laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, *any thing in the Constitution or law of the state to the contrary notwithstanding*."

It seems to have been a matter of very great anxiety among the politicians of the slave states, to satisfy the American people that slavery was an institution, recognized in the Constitution of the United States.

To be sure they have had great disagreement amongst themselves as to the article or section of that instrument in which this tremendous power of man over man was lodged, some finding it in one article, and some in another; but they have all agreed that it does exist some where, in this *revered instrument*. Admitting that the monster slavery is permitted to exist with limitations and restrictions, in the Constitution, we contend that it can exist no otherwise, than as the Constitution has said it shall exist, which is that "*no person shall be deprived of his liberty, except by due process of law*."

Until this great constitutional pre-requisite has been complied with, no man in the nation can have a constitutional *deed* of another's body, and the control of its powers. The slaveholder has never seen fit to comply with the great compact agreed on, in the Constitution, by which the power to hold a slave was created.

But the slaveholder has assumed a jurisdiction over the slave, in the very face of the Constitution, and contrary to its solemn interdict, and high behest. The reason why these unasserted rights of the slave have lain dormant and unexamined, seems to have arisen from the utter inability of one under the bonds of slavery, to take the very first step, which is to appear in a court of law, to vindicate his right for and to himself. For in the slave states the barbarous rule has become law by which every person in whom there is African blood, is presumed to be a slave, till the contrary is made to appear.

The colored man, instead of going into the temple of justice, with the charitable presumption in his favor, that he is a man, and a freeman, comes with a *prima facie* judgment against all his inalienable rights. The laws of those states in which slavery exists, say, in defiance of the Constitution of the nation, that the colored man is to be considered a slave, and his having African blood in his veins is made the *test*, instead of the one laid down by the United States Constitution; which is a record of conviction showing the individual a slave by a due process of law. The Constitution of the United States presumes the colored man a freeman wherever he is found in the confederacy. And that presumption can only be rebutted by the record of conviction shewing that he has been deprived of that liberty by due process of law.

The Constitution and laws of the several states say the test for the loss of liberty depends upon a man's blood, the curl of his hair, the distended nostrils, the thickness of his lips, or the darkness of his complexion. The Constitution of the United States says it depends not on blood, ancestry, the country of origin, the shade of complexion, the nostril or lip, but on a record of judgment pronounced by a court on oath, by a petit or grand jury, on oath, and by evidence taken by these juries and court, on oath. Each and every step taken in this moral demonstration and search for truth, was to have been under that solemn appeal to the retributions of the eternal judgment, for the truth of the testimony taken, as for the opinions formed on that evidence by the grand and petit juries and court.

Which of these tests ought to prevail, we can entertain no doubt, as long as the Constitution of the Confederacy is paramount in authority, to all state constitutions, and laws made under them, or judicial decisions of slave states made in hostility to the Federal Compact?

But it may be inquired, why has not the slave asserted his right long since? Ask the ox and horse of New-York why they have not exchanged their hard masters for the unbounded liberty of the wild ox and untamed horse of the vast prairies of the western wilderness?

Man was not a slave justly, when made so by all the forms of our national Constitution. Rank injustice lies at the bottom of the principle, even when the slave had had the benefit of all the forms prepared by that Constitution for his defence.—But because the Constitution was wrong in making a man a slave, even by due process of law, that is no reason for stripping him of the rights and presumptions, which the Constitution has flung round him for his defence.

The practice has been for the lordly slaveholder, or his agent, in all the pride of wealth, to pursue his fugitive, and on very slim proof before a magistrate, that the man had been in his service some time, or that he had bought him, or that he was born on his plantation. Without pushing inquiries further, the magistrate makes an order and delivers the helpless fugitive to his alleged master.

The fugitive is taken from the State of New-York to Alabama.

Who is there in New-York to carry up this decision of the magistrate to the Supreme Court of this State? The fugitive, who might claim a title to his body as plaintiff, is gone, as well as the master who should be the defendant, both out of this state. How could the Supreme Court obtain jurisdiction by way of reviewing the magistrate's decision? Both parties are gone from the state. But supposing some friend of humanity should, at his own expense, have the magistrate's decision reviewed by the Supreme Court, and carry the cause there, and that court should reverse the judgment of the justice. What benefit can accrue to the slave?

The Supreme Court of this state can issue no writ for deliverance beyond the bounds of N. York. Consequently, in the course of forty-eight years, amidst the thousands of fugitives who have been sent into slavery from this state, no argument in the Supreme Court, or the Court for the Correction of Errors, involving the great constitutional rights of the slave, has ever been considered or debated. One or two cases have been before the Supreme Court and Court of Errors on incidental points, involving an inquiry into the rights of persons claimed as slaves. The Congress of the U. States would not have conferred the apparently immense power, without the trial by jury, upon single judges, and even single magistrates of moderate capacity, with little learning, in every town and village in the United States, to decide so great a question, as whether one of our citizens was a freeman or slave, but upon the presumption that every slave in the nation at some period, had been deprived of his liberty within the meaning of the constitution, by due process of law; and that the record of that conviction by a grand and petit jury, and judgment of a court, would always be produced, by the master or his agent, to the jury or magistrate, as the very title deed, proving that the man had lost his liberty by due process of law. This is the reason why the act of Congress makes no provision for a trial by jury, in case of a fugitive, presuming that the man had once had the full benefit of a jury trial, or otherwise he could not be called a slave.

But after all, it may be asked, if the constitution has made provision that no person shall be deprived of his life or *liberty*, without due process of law, why may not Congress pass a declaratory act, carrying into effect the spirit and intention of this article of the constitution?

"If there be any general principle which is inherent in the very definition of government and essential to every step of the progress to be made by that of the United States, it is, that every power vested in the government is in its nature sovereign, and included by the force of the term, a right to employ all the means requisite and forcibly applicable to the attainment of the end of such power; unless they are expected in the constitution, or are immoral, or are contrary to the essential objects of political society." So says Judge Story.

The constitution having taken up, staked out and defined the great landmarks of personal liberty; and having placed each individual or "*person*" of this republic in a condition to enjoy the full benefit of a jury trial before a court—proceeding upon the principles of the common law, before liberty can be taken away, can it be tolerated, that states and individuals of slave states, by the boldest tyranny, shall seize upon and defraud 2,500,000 of American citizens of their liberty, and convert them into abject slaves, in the face of their own high and solemn constitutional barrier, which was made paramount to all state constitutions, laws, usages, judicial or legislative? Congress would possess the undoubted right to say, that the constitution of the Union has settled the terms and conditions on which a human being may be made a slave, forbidding all other manners or modes. The people of the slave states have had forty-eight years, almost half a century, to avail themselves of the constitutional mode for perfecting their supposed title to the bodies of their fellow citizens. But from the wantonness and absurdity peculiar to all such unnatural relations as that of master and slave, the master has seized and held the slave, contrary to the constitution, and without his constitutional title deed. The masters have admitted their inability to prove their colored people slaves, as they have never done it. Almost two generations have gone down to the grave since the shape and form in which slavery should exist, without finding a human being deprived of his liberty, by due process of law, on the ground that he is a slave. It would be fair to infer that there were none. Therefore Congress would but obey the strongest dictates of patriotism in giving full play and action to the constitution, by imparting the blessings contained within its mighty folds.

Congress have full power, therefore, to pass a law abolishing slavery, in substance, in the following words:—

"Whereas, the people of the United States, by the constitution, ordained that no person should be deprived of his liberty except by due process of law, by indictment by a grand jury, and the judgment of a court: And whereas the people of the United States, who pretend to hold slaves by the laws of several states, have never established their title to their alleged slaves by due process of law, during the forty-eight years which have existed since the mode of creating a slave was ordained by the sovreign people of these United States: Therefore be it enacted by the Senate and House of Representatives in Congress assembled, that all persons in the United States, who were not deprived of their liberty and made slaves by indictment by a grand jury, by a petit jury, and judgment of a court, previous to the first day of January, 1837, be and the same are hereby declared to be free persons, any constitution of any state, or law thereof, or usage, judicial or legislative, in any state of this nation, to the contrary thereof notwithstanding."

From the reasoning pursued in this paper, it appears manifest that every fugitive slave who has been delivered up, ought to have had his liberty; that every order made for the delivery of slaves to their supposed masters, have been made without the evidence required by the constitution.

A further deduction seems legitimate from these premises, that we of the North are not bound to uphold slavery in any form, as we have not the evidence agreed on by the constitution, that there is a slave in the United States. All presumptions are to be made in favor of liberty, until the record evidence by due process of law appears, by which the slave has been deprived of liberty according to the constitution of the United States.

We are bound to do but one thing, which is to petition Congress, without ceasing, until Congress passes a declaratory act, in affirmance of the great principles of human liberty established in the 5th article of the amendments to the constitution of the United States, by which every slave unconstitutionally deprived of his liberty, may lift up his head and rejoice for the hour of his redemption.

If it be true that Congress have entire power over the question of slavery, and a right to put an end to the unconstitutional slavery which now exists, is it not a matter of rejoicing that in all future efforts of our cause, they will be directed, not against slavery in detail, in the District of Columbia, or the internal slave trade between the states, but against it as a whole, as an entirety. We can fence in the whole field. How thankful should we be, if the foregoing proposition be true, that the responsibility of slavery rests on the entire American people, and that its overthrow does not depend upon the conversion of slaveholding states to our sentiments; but Congress has ample and complete power over the question.

For all this, let us give thanks to the Most High.

MISCELLANEOUS.

LATE AND IMPORTANT FROM JAMAICA.

Awful results of Abolition excitement!—Contemplated rising of the entire colored population of the Island of Montserat!!

By an arrival at this port from Jamaica, we receive the unexpected and distressing intelligence, that in view of the general excitement of the public mind in England against the apprenticeship system, & the probability of the success of the petitions pouring into Parliament for its abolition, the Council and Assembly of the British Island of Montserat have unanimously resolved to abandon that system forthwith—and have accordingly instructed the law-officers of the crown to prepare and report "AN ACT FOR THE FULL AND ENTIRE EMANCIPATION OF THE WHOLE COLORED POPULATION OF THIS ISLAND ON THE FIRST DAY OF AUGUST NEXT ENSUING!" The sudden RISING of several thousand THINGS to the elevation and dignity of MEN on that day, may therefore be considered certain. Verily, "it *is* enough to make one's (pro-slavery) heart bleed" to witness the EVILS which these abolitionists are bringing upon the poor slaves!

Abolitionists, "thank God and take courage."

B.

MORE EVIL EFFECTS OF EXCITEMENT.

In addition to the foregoing, we are deeply concerned to learn, that the Governor of Barbadoes (an island second only to Jamaica in wealth, importance, and population, and containing about 100,000 apprentices,) has sent a message to the Legislature, strongly recommending the adoption of a joint resolution by the two Houses, for the ENTIRE ABOLITION OF THE APPRENTICESHIP SYSTEM ON THE FIRST OF AUGUST NEXT!

Thus it appears more than probable that without the intervention of a miracle, the machinations of the abolitionists will succeed in banishing the last vestige of slavery from the British West Indies, on the first of August, 1838.—*Emancipator.*

OBSOLETE WORDS.—To the list which you lately copied of the words in our Bible, which have either become obsolete, or have obtained a different signification, might be added.

"*Good man of the house*," where many readers think that good is a laudatory epithet, whereas it means, simply, the master of the house. In Great Britain, particularly in Scotland, the phrase is still used to signify the male head of the family, but has never been Americanized.

"*I am resolved* what to do," Luke xvi. 4, is apt to be regarded as denoting, I have made up my mind—I have determined: but it is an old English idiom, signifying my doubts are resolved—I know what to do. The Greek is literally *knowing what I shall do.*—*S. S. Journal.*

AMERICAN BOARD.—The monthly receipts of the Board, for the seven months since the close of the last financial year on the 31st of July, have averaged about 21,000 dollars. Should the receipts continue as they have been, and should there be no increase of expenditure, the debt of the last year would experience a reduction. Considering the state of the country, this result has been beyond expectation. It calls for gratitude to God. It shows, that under no circumstances will the community lose sight of the cause of missions. It authorizes the expectation, that with returning prosperity there will be such an increase of liberality, that the gospel, as published through the instrumentality of the Board among the heathen, will again have free course.—*N. E. Spectator.*

From the Friend of Man.

FROM THE CAPITOL OF THE "EMPIRE STATE!"—A NOTE OF ADMONITION AND REBUKE TO DESPOTS!—It will be seen by the news from Albany, which we now spread before our readers, that the tide of oppression and sycophancy that has so long deluged our State Capitol, is beginning to roll back! One messenger of good tidings presses hard upon the footsteps of a preceding one. Last week we copied from an Albany paper the particulars of an anti-slavery lecture in the State House by ALVAN STEWART, Esq., the Chairman of the Executive Committee of our State Anti-Slavery Society. Some farther account of the same meeting, as furnished by a correspondent of the N. Y. Emancipator, will be found, to-day, in our columns. We are now able to add the cheering remarks of our correspondent in Albany under date of the 19th inst., and to follow it up with two of the important legislative reports which he anticipates, and also the incipient proceedings of the Assembly in respect to them. *In one word, the committee have reported a* PROTEST against the ANNEXATION OF TEXAS, and again, the infamous GAG-LAW OF MR. PATTON: and no doubt can be reasonably entertained that the Assembly will give them a hearty adoption.